692 "arbiters" and a "jury" that has set various methods of establishing proof (including several methods of ordeal). L. Mba, in a still unpublished study, (1) points out the existence of a

1. Last part of Essai de Droit Coutumier Pahouin [Essay on Pahouin Common Law], in Rapport de la Commission Enquête Historique, Libreville, 1949.

"family tribunal" – of minor lineage – with the ntòl as peacemaker assisted by one or two members of the grouping for dealing with purely internal affairs. He also indicates the existence of a "tribunal" of major lineage that intervenes in conflicts between two or several nd'è bòt, this constituting in principle) a court of appeal, consisting of a judge (who is not necessarily the "chief" of the lineage but any peacemaker who has shown his ability) before whom the representatives of the groupings involved appear. He also points out the existence of a similarly constituted clan "tribunal," which has the same functions at the level of larger groupings and also has the role of a court of appeal. Let us add 695 that the jury (bétolō) is not selected, outside of (blood) relatives and relatives by marriage, until the day the "tribunal" meets. These are only general indications. They show, however, that it is not so much a question of organizations with a judicial function as of principles [141] assuring the regulation of infractions and conflicts by a way other than violence. The status of "judge" 693 554 does not exist with the definiteness we will find when studying the Ba-kongo; instead it displays the same weaknesses as those of the "chief's" situation. The latter may be the judge for the lineage and the clan, but he will often find himself supplanted by a true "master of palaver." In this connection ability and personal prestige are dominant to such an extent that recourse is possible to judges of foreign clans, especially in criminal matters.

692 In the matter of judiciary organization as in that of the chefferie, it appears that the framework of kinship groupings lend itself very little to a centralization of power, either political

c. Punishments

681 The scale of punishments included death, the paternal curse, putting in chains (mbok), fine, and bastinado. To these were added for women removal of the clitoris and the labia minora, injection of pimento into the vagina, and public exposure, naked, with legs held apart by the mimbok /pl./ (esamele minga).

681 783 The death sentence was carried out so as not to shed blood— which would have made purification necessary—by drowning, strangling, burial alive (the last particularly in certain cases of nsem, like incest), or by burning. If the execution had to be bloody, it was carried out by a captive—a foreigner to the clan—but, in theory, the shedding of blood always had a sacrificial character and was to be avoided on all other occasions.

The death sentence was applied for sorcery and serious minsem (breakings of taboo) such as incest or the killing of a monyañ. For other infractions, compensation was the general rule, either by retaliation or by indemnity, the latter usually being the preferred method. For instance, for a homicide /meurtre/ committed outside the clan, the mintôl arbitrators tried to make the killer's family pay blood money, either in goods or by giving a woman in compensation. To this there might have been added some sort of disciplinary corporal punishment within the killer's clan or family. If compensation was not paid, the victim's clan had recourse to retaliation upon any member of the clan or family of the guilty man: responsibility was individual within the family, collective within the clan and tribe.

A fine must be distinguished from the compensation accorded to the victim: it went, in fact, to the ntyi'i mejô, perhaps to pay for his intervention. It survives today, though illegal, to the benefit of official and semi-official assessors: it is freely called toya, from Coast English tax, to distinguish it from compensation, ngôtô = ransom, redemption.

Placing in chains applied especially to persons considered socially dangerous (it is nowadays used in remote villages for some insane), bastinado to minor crimes committed within the clan. Clitoridectomy was the punishment for adultery and minor incest. The injection of pimento was rather a nkal, test or ordeal, than a punishment; it was applied especially to widows after the husband's death to discover whether or not they had been responsible. The use of ordeals, minkal,

● 695

695 was in other respects common. They were administered either by the ntyi'i mejo —esa, ntol, njoo bot, or officer of the ngil or another association—or by a diviner, mvimvi'i, sometimes a specialist in this category of bitom, palavers. The true ordeal had several forms: by a curse uttered over the ancestral grave or the bieti basket; by bitter herbs, alan; by pimento or ants; by boiling water or fire. /72/ Initiations and particularly that for ngil all involved a collective ordeal intended to ward off beyem who might have tried to push their way in. In addition to the ordeal proper, the mvimvi'i could make use of various forms of divining in order to discover presumed culprits. Except for a serious crime, the culprit thus revealed was not forced to undergo an ordeal if he admitted his guilt. Physical ordeals are on the decline; they are considered crimes or delicts in the Penal Code. And ordeal by oath has lost a great deal of its force. Divining remains much in use and is sometimes highly effective (1).

[787] [671]

1. An oath may be sworn on a nzo'okak—a little elephant shield containing various medicines, equipped with a strap and worn under the arm. The nzo'okak is not an insignia of authority. Upon the death of its holder it does not pass automatically to the man who becomes head of the family but goes to the one who has a flair for magic. To leap over a nzo'okak laid on the ground means swearing that one has told the truth. The nzo'okak is a guarantee of treaties: after a battle it is placed between the belligerents, who jump over it to vouch for their peaceful intentions. (J. B.)

[728]

[77] 681 Among modern punishments, fines and imprisonment are well recognized by the Pahouin and have a definite intimidating power. On the other hand, the subtleties of setting up a public prosecutor /la constitution de partie civil/ are beyond many peasants, who thus lose the possibility of receiving damages that custom would have given them. Above all, the Napoleonic interpretation of crimes and delicts remains pretty well foreign to Pahouin norms, for example, in judging an insult as a mere transgression even when directed to an

764 commun/ were buried by their co-wives and the women of their affinal family. Bongô and bikeñelé were buried at home with no other ceremonial than the mother's mourning.

768 787 When signs of sorcery were found on a corpse, the ngengañ or mvimvi'i turned to divination to find the presumed culprit, who was subjected to an ordeal of bitter herbs. As a general thing, wives had 695 to submit regularly to the pimento or ant ordeals to make them confess not only the part they might have had in the husband's death but also their adulteries. When no one was found responsible for the death of a mie individual (nonsorcerer), it was decided that he had been the victim of a breaking of taboo, nsem, sometimes unwittingly. Whatever the cause of death, sorcery or nsem or repercussion from 783 an act of sorcery, purification always occurred, generally by a sacrifice at the end of the mourning period (meyep). /103/

765 The duration of mourning was, and still is, a mbu /six months/, but it is now less rigorous. Formerly the wives of the dead man were secluded, naked, for a month in his hut, the first wife lying on his bed; their heads and all their body hair were shaved, and they were painted white with ash and forbidden to wash or do their hair until the end of mourning. The dead man's brothers and sons shaved their heads and let their beards grow without trimming or combing; their foreheads were painted white and they wore only old clothes. They had to observe a series of prohibitions concerning certain ways of hunting, the eating of certain kinds of game (perhaps the dead man's personal totem?), all journeys, the circumcision of the dead man's sons, the use of a bed, etc. The end of mourning was marked by a sacrifice and often by a melan ceremony in order to enter into communication with the dead man.

The strictest mourning was observed for the death of an esa, a man of the father's age grade, less for a monyañ, and hardly any for a mongô. With regard to women, a man observed solemn mourning only for his mother and first wife, and this meant mourning within the family, while a man's death involved the whole village. However, an epidemic was followed by heavy mourning, and when the one presumed responsible was identified, it was not enough that he 766 pay avutan, compensation, he was burned or drowned (his immediate 779 family was constrained to pay the avutan), and then a general 783 purification was undertaken.

VII. Ordeals

● 695 In ordeals (1) or judicial tests the appeal to the totem's

> 1. Ordeals, from the Anglo-Saxon ordaal [ordál -dél], in modern German, Urteil, judgement.

intervention plays a fairly large part.

[171] These tests are very common in Bantu tribes; and we find the same thing on the other side of Africa, among the Jaluo at Kiviri.

The form of ordeal among these peoples is as follows and closely resembles that of the Fan. "A small pot of water is placed on the fire. A little wimbi flour and a bit of 'medicine' are put into the water. If the water boils over, the man is guilty, if not, he is innocent.

"A gourd basin with a large hole cut in the bottom is placed on a flat stone. Water is poured into the calabash, the bottom of which being, of course, not close-fitting to the stone would permit ordinarily of a leakage [I have emended an obvious misprint here, "bakage."--Translator] But the medicine man who attends puts into the bottom of the calabash crushed-up leaves of a kind of mimosa [559] which, for a time at least, stop the leakage and enable the calabash to be filled up with water, the retention of the water by the calabash proving the man to be innocent.

"Dry flour is given to the suspected persons. If innocent, he can swallow it; if he is able[1] to moisten the flour with his saliva and swallow it, he is shown to be guilty." (1)

> 1. Sir Harry Johnston, op. cit., "The Jaluo."

The Fan often resort to ordeals, especially in the following circumstances: accusations of theft, adultery, murder, sorcery, "sins" against the clan or village totem. Without going into details, I shall point out merely the part played by the totem.

[1] [Errata; should be "unable". --Analyst]

685 If the offense is admitted, punishment follows immediately. With theft, for instance, the person who has committed larceny must make a restitution of double the value. In some tribes, the thief if condemned to lose an ear, a finger, a hand, sometimes a foot. Often he may be sold into slavery. Among the Fan he has merely to return twice the amount stolen.

684 In case of adultery, the culprit pays the value of the woman and is also often kept prisoner for a long time in the plaintiff's village; his head is shaved and he is exposed to the sun, covered with spices. If payment is not made, and even if it is, the woman's father or husband has the right -- and makes use of it -- to cut the joints of the culprit's fingers so that he is made almost powerless. Women are cruelly beaten and spices are rubbed into her wounds. She is also chastised with the [413] nkôn éki, (2) a kind of long iron shears used to pinch deeply and

2. This is the name of certain villages where the blacksmiths are found who are skilfull in making these instruments of torture.

cruelly burn the genital organs. At the second offense her nose and ears are cut off; a third brings death.

682 In case of murder, the murderer, when captured, is killed and eaten. Furthermore, his family must pay compensation with a woman or the equivalent value, that is, two lives for one.

● 695 For all other charges and for those just mentioned, when the acknowledged or presumed culprit denies his guilt, judicial trial is required. [560]

Whatever the ordeal, they may all be considered from two points of view, or even are of two degrees. The first ordeal is intended to "indicate" the likely culprit; the second, to decide whether or not he is really guilty. Punishment is immediate and strikes simultaneously at body and soul.

The first step is therefore to discover the culprit. With theft, murder, or sorcery, the ordeals vary according to the case.

695 The following are some of the principal kinds:

694 672 619 682 A man is accused of murder. He will first have to be seized; if that is impossible, it does not much matter. Since members of the tribe stick together, another man will be seized, no matter whom. If this cannot be done, the Fan may even take a man belonging to another tribe, who will be kept prisoner until his family and tribe, taking up the cudgels in their turn, capture either the culprit or a member of the culprit's tribe. One can see to what degree such solidarity may lead to retaliation.

695 682 Once a man has been caught, guilty or not, he undergoes one of the following tests:

The dzismébiân is the eye ordeal. A person is brought before the chief, gagged and with his head pulled back. The practitioner takes a little pot made from the hard shell of a small gourd called ngon, which is filled with a certain liquid [278] consisting of vegetable poisons with an atropine base. The presumed culprit has the right -- and often takes advantage of it -- to require his own totem to be dipped in the liquid. The contents of the pot are then poured into his eye. If the eye stays in its socket, the man is innocent; if the eye is destroyed or raised out of the socket, he is guilty. (1) In the latter case

[[71]] 1. The same test occurs among the Bangala and Barundi.

he is immediately killed by a knife stroke. He may nevertheless ask to drink the test poison, provided that he is buying back his life for the first time. This is often permitted.

A second and more generally used ordeal is the following, called médzim mé ne ayôn, burning water. [561]

The practitioner boils water in a pot. When it comes to a boil, he throws in a wire ring, and the presumed culprit must retrieve it without burning himself; if his hand is injured, he is declared guilty, but if not, he is adjudged innocent and is dismissed. In such a case, the plaintiff himself is punished and must drink the test poison. The accused man has the right to

695 boil his own totem in the pot, but so has the practitioner, in
682 order to counterbalance the power of the accused man's totem.

The red-hot iron test, éki biâ̂n or biâ̂n éki biâ̂n, is the third ordeal.

The accused man's knife is heated red hot, then pressed to his cheek; if the cheek is burnt, he is guilty; otherwise, he is declared innocent. He has the right to throw into the fire, in which the iron is heated, the ashes of his individual totem; he also has the right to rub with this same totem that part of his body to which the red-hot iron will be applied.

There is no need to dwell on how easy subterfuges would be, all the more so since before each ceremony the presumed culprit is allowed to apply a few strong poultices or substances to harden his skin. The totem would then be only more effective!

If declared innocent, the accused man nevertheless owes a sacrifice to his mvane, a debt that will be readily discharged.

685 In case of theft there are also three tests used, as follows:
695 for the otura biâ̂n, the practitioner lights a large fire in
787 the middle of the village, fed with special kinds of wood. When the fire has caught well, he throws an armful of wet leaves on it; he then moves back, having pronounced above the rising smoke certain magical words. The column of smoke at first rises straight up; suddenly, without wind (often there is not a breath), without any visible physical action on the part of the practitioner or anyone else (because they are all at a distance), it curves inward, we are told, eddies, and then advances towards a hut which it completely envelopes. The hut's owner is immediately seized and declared guilty [562]; however, he can insist on drinking the test poison, provided that he is buying back his life for the first time. One cannot redeem oneself from the test poison.

The smoke test has always seemed to me one of the most difficult to explain. I have witnessed it several times and in spite of the closest attention have not been able to perceive the least trickery.

685 A second test is the following: the practitioner lies on the
695 ground and appears to listen to mysterious voices which are heard,
787 in fact, as if coming out of the earth. Probably a simple effect of
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ventriloquism is involved; certain practitioners are past masters at it. The voices mention three names, which the practitioner repeats aloud. Each of the presumed culprits must then bring a fowl; these are slaughtered by the practitioner and their blood is poured on the ground. The first sign is deduced from the way in which the drops fall and the forms they take. The fowls are then cut open, and the position of the liver and the final contractions of nerves and muscles corroborate the first indications.

The totem plays only an inconspicuous part in this test, which in any case is rarely used nowadays.

The most frequent test is the akala-nkal, thus called after the fetish nkal, which is kept in an antelope horn or large snail (ngɔ̀n). The practitioner heats water, mixing in different kinds of plants, and adds, to satisfy those who may think they are suspected, some of the ashes of their totemic sacrifice.

When evening comes, every man prepares a fire of wood and bamboo in front of his hut. The chief then goes through the brightly lit village, invoking guardian spirits and threatening the thief or thieves with terrible vengeance. Then he runs and jumps over all the bonfires, the men and women of the village following after him. If a man or woman should touch one of the brands with a foot so as to make it roll off the fire, that person is declared guilty. While undergoing the nkal test, the chief carries his totem in his hand. If all come through safely, the chief starts again on his own, this time holding the village totem, show everybody's innocence even more. [563]

After this first trial, which everyone usually gets through with the greatest ease, the one or more accused if such there be, if not, all the men of the village, take a drink of lustral water which the practitioner has just boiled; then they take a few steps and spit on the nkal, which has been put on the ground. Each person then steps over the nkal, swearing his innocence, and starts once more to leap over all the bonfires. If he is not hurt, he is declared innocent. It is extremely rare that, from the effects of the poison or for some other reason, one or another does not stumble over a brand and knock it out of the fire. He is thereupon declared guilty; if he denies it, he will have to drink the élûn̂; if on the contrary, he saves his life but has to repay the theft twice over.

683 781 695 278 This is the most frequent test among the Fan.

Anyone accused of sorcery, or all those who have succumbed during the first tests, must drink the ordeal poison. This ceremony has been described so often that there is no need to go into it at length.

In the Fan test-poison ordeal three different poisons are used, according to the case in question: the sap of the éñn̂ tree; the grated bark and roots of the oné or onaï; (1) the roots of the

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> 1. Strychnos onaï: this shrub of the strychnine family, produces the poison used on arrowheads. Puncture is fatal if the poison is fresh, and death ensues within a few moments. If the poison is old, the wound slowly becomes gangrenous. Bromine is a good antidote.

shrub kwéa. (2) These roots are finely shredded, thrown into

> 2. Strychnos ikaja: this is a common test on the coast, where kwéa, the natives say, is called ikaja, nka, mbonde, ibonde, etc.

boiling water and a reddish liquid is obtained after a few hours of simmering. This highly dangerous brew contains in solution a considerable amount of strychnine and hyoscine.

683 781 695 The ngenngâñ, or practitioner, begins by sacrificing a she-goat, with the formulae already indicated. Next, all the villagers assemble, and the practitioner appears in red and white paint, with red parrot feathers and black fish hawk plumes stuck into his hair to form a crown. His only garment consists of a skin tied around his loins, and he wears many bells on his hands and feet. [564] He invokes the protective fetishes of the village, leaps, skips, and howls frenetically. The tom-tom played by one of his acolytes is beaten faster and faster; the practitioner's movements increase in tempo; little by little he seems to move by preference toward a group, the sound of his bells directing him, so he says. Finally he halts abruptly and points in the crowd

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to one or more culprits, who are immediately seized and led to the middle of the public square, where one of the practitioner's assistants is waiting with several cups of the liquid.

Those who, in previous ordeals, have asked to be given the poison to drink are also brought up at the same time.

Each in turn empties a cup: the effects vary according to the kind of poison.

Those who drink the élûn quickly develop a violent trembling, which convulses the whole body. They can hardly keep on their feet and would roll on the ground were they not supported by friends. If at this point they are able to urinate copiously, they will gradually recover and survive. However, for years they will have a persistent nervous tremor.

Those who drink the ikaja or the onaï seem, on the contrary, to be knocked out: they fall down, get up, and fall down again. They survive only if they can vomit the liquid.

Whatever the effect of the poison, all who have undergone the test are led before a log thrown like a bridge over a brook, or sometimes before a plank or a dead tree laid on the ground. They must tread it without help from one end to the other. If they teeter and fall, all the participants leap on them, [266] strike and kill them with clubs, tear them apart and eat them on the spot. However, the sorcerers or those who claim to be are never eaten but are burnt alive. Those who get through to the end of the plank have to pay a large fine. "There's no [538] smoke without fire," seems to be the Fan proverb, translated into their idom as, "Ké abi fo ve fo -- there's no rat hole without a rat!"

The totem enters to a fairly large extent into all these tests, either through the practitioner who invokes it or through the unfortunate accused who always have the right, quite illusory for them, to have a [565] piece of the totem boiled with the élûn (1) and to invoke it before drinking up the fatal

1. It is not for me to pass judgment on these ceremonies, or to show to what degree the practitioner plays the dominant role, often getting well paid

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for administering an effective emetic along with the test poison. I shall evaluate these ordeals later when discussing religion.

potion.

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Women are not subject to the tests I have just mentioned except sometimes to the nkal test. Among the Fan they do not drink the test poison; they are, in fact, considered as irresponsible and in a state of tutelage. Therefore in cases of serious accustion, a woman's father or husband has to take her place but does not invoke the totem, because it would not be able to act on her behalf since it does not acknowledge the woman.

Only for an accusation of sorcery does a woman have to submit to a test.

She is brought gagged to the middle of the village, two female relatives pull her head back, and the practitioner empties
[278] into her eye the sap of a euphorbia called ka. (2) If she comes

2. Euphorbia scandens, of the arboreal euphorbias.

through unhurt, she is innocent. If, on the contrary, as nearly always happens, the eye leaves the socket, she is immediately
[266] declared guilty, dragged away into the forest, burnt, and eaten. The accusation frequently arises, and punishment is never delayed.

VIII. Blood Exchange

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" 'Brotherhood' (in America, totemisation)," says Mgr. Le Roy, (3) "is relationship through an exchange of blood; if

3. La religion des primitifs [The Religion of Primitive Peoples] op. cit., p. 120.

this is not quite totemism, it is very near to it."

8: Bennett D-5 (ca. 1898) 1899 FH9 Fang FH9

gourd mentioned above). They put oil in it. They keep it hidden. No one else 832
is allowed to see it.

When the woman cooks food for her husband, she takes the medicine, which she puts in the neck of the gourd, and puts it in her husband's food, then his heart is changed. In the evening the woman smears herself with the *abatoŋg*, which she had put in the small gourd. When she and her husband lie down, if she touches her husband, the medicine which she has eaten makes his heart change. Though he liked her before, now he loves her on account of the *biang-abationg*.

This is the *Biang-abationg*.

Biang-mikal (adultery medicine).—People go and scrape medicine in the bush. 837
If they come with the medicine, they put it in the pot. They put water in the pot. 755
They go and catch a fowl. They cut the fowl's neck; they put the blood in the 695
medicine with the scrapings from trees. They take medicine that is in the water, they pour it on the person's head. They also take a certain medicine called *ngwcia* and rub it on the face of the sick person. They again rub it on his belly. Then they have cured the person of the *minkal*. The fowl used is not to be eaten by the sick person, others may do so. Then he is healed.

This is the same medicine used to detect adultery. If a person commits 837
adultery with another man's wife, and then speaks a lie denying the affair, the 795
person accused must drink the *biang-mikal* to show the people he is innocent. If he is guilty the medicine makes him sick, and he dies or trouble comes to his people. If guilty, medicine is made to call the curse back.

This is the *Biang-mikal*.

Biang-ndona (medicine for young men, eloping medicine).—If a person goes on 584
a journey and sees a virgin, he courts or loves her. Then the virgin accepts him. 832
He and she go and lie down. The young man says, "Let us go in my town." If the 583
virgin does not accept, then the young man tries to persuade her. The virgin says, "I go later." The young man says, "If you go later, give me hair for a souvenir." Then the virgin scratches over her heart. She takes the hair of her head and the blood from the scratch over her heart and gives it to the young man. He goes to his town, he says, "I'll first make medicine." He takes the hair and the blood. He takes a small piece of witch medicine. He also takes plenty of leaves. He puts the small piece of witch medicine with the leaves. The hair and the blood he also puts in the leaves. He mixes all in the leaves. He hangs them in the *bieti* basket. He says, "*Bieti*, I want to marry a woman. Take her for me." This eloping medicine hangs one day. In the morning he cuts medicine and puts it on top of a tree. He leaves the medicine on top of the tree. He goes again to the young virgin. He says, "I have come, I come to take you." The young virgin says, "I will go to-morrow." He sleeps. The young man when day breaks says, "Let us go." The young virgin says, "I will surely go." Then the young man elopes with the young virgin; he comes with her to his town. Father of the young virgin he comes vexed. The young man kills a goat for the father of the young virgin. They finish eating the goat. He (the father) sleeps one day. Next morning the young man